

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. 4:01-CR-42-1H
No. 4:12-CV-157-H

UNITED STATES OF AMERICA

v.

VANCE C. HENDRICKSON

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ORDER

This matter is before the court on defendant's motion to vacate or set aside the judgment in his case. Defendant is in custody and seeks to vacate his conviction and/or sentence. Defendant has moved this court to construe this motion as a Rule 60 motion, not as a motion pursuant to 28 U.S.C. § 2255. However, upon review of the motion, the court finds it is, in reality, a motion filed pursuant to 28 U.S.C. § 2255. Therefore, petitioner's motion to construe [DE #100] is DENIED.


28 U.S.C. § 2244 (3)(A) provides that before a second or successive habeas corpus application may be filed in the district court, the applicant must move the appropriate court of appeals for an order authorizing the district court to consider the application.

The petitioner has filed a previous 28 U.S.C. § 2255 claim; therefore this court is without jurisdiction to review the

matter until authorized to do so by the United States Court of Appeals for the Fourth Circuit. Accordingly this matter is DISMISSED without prejudice for the petitioner to seek authorization to file this application in the Eastern District of North Carolina.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). A reasonable jurist would not find this Court's dismissal of Petitioner's § 2255 Motion debatable. Therefore, a Certificate of Appealability is DENIED.

This 24th day of October 2013.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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